IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9698 OF 2003

Smt. S.S. Ajmera Trust and Ors. ..Petitioners

Vs.

Smt. Susamma Cherian & anr. ..Respondents

Ms. Sindha Shridharan for petitioners.
Mr. R.K. Saroj h/f Mr. S.V. Pitre for respondent no.1.
Ms. S.S. Bhende, AGP for respondent no.2.

CORAM: B.H. MARLAPALLE, J.

Date : August 17, 2006.

P.C.:

1. Heard Ms. Shridharan the learned counsel for the petitioners-Management and Mr. Saroj h/f Mr. Pitre the learned counsel for the respondent no.1-teacher and Ms. Bhende the learned AGP appears for respondent no.2.

2. The petitioners are aggrieved by the decision of the School Tribunal, Pune Region, allowing Appeal No.48 of 2001 filed by the respondent-teacher. By the said order dated 17/4/2003 the order of termination dated 23/5/2001 was set aside and the petitioners were

directed to reinstate the respondent-teacher in service as a Headmistress from the date of termination with full back-wages and there was a further recommendation to the State Government to deduct from grants the payable amount of salary and pay to the respondent-teacher.

3. It was the case of the respondent-teacher that she came to be appointed as the Principal of the petitioners' school located in Pimpri as per the order dated 25/8/1998 on a consolidated salary of Rs.6000/- per month and she was on probation for a period of six months. By the communication dated 23/5/2001 she was informed by the petitioners that her three years service came to an end on 31st May, 2001 and her services were no longer required. She was called upon to hand over the charge to the senior-most teacher Mrs. Shoba Shinde and collect her dues. Consequently, she approached the School Tribunal in Appeal No.48 of 2001. After hearing both the parties the learned Presiding Officer of the School Tribunal held that the termination order was illegal and void ab-initio. Surprisingly, the Management while

opposing the said appeal contended before the School Tribunal that the appellant having been appointed in a private un-aided school, the provisions of the MEPS Act, 1977 were not applicable to her service condition. The Management also did not dispute the eligibility of the teacher for being appointed as the Principal/Headmistress of the said school. As the teacher had attained the status of a confirmed Principal, her services could have been brought to an end either on reaching the age of superannuation or her resignation or by way of punishment as a result of a disciplinary proceeding initiated against her. The impugned order dated 23/5/2001 did not fall in any of these categories. At the same time, Section 3(1) of the MEPS Act, 1977 states that the provisions of the Act shall apply to all the private schools in the State of Maharashtra, whether receiving any grant in aid from the State Government or not. Thus, the defence of the Management before the School Tribunal while opposing the appeal was based on totally erroneous ground and the termination of the service of the Principal could not have been by any other mode other than the one recognised under the Act or the

Rules thereunder and by following the due procedure. The School Tribunal was, therefore, right in its conclusions that the impugned order of termination was illegal and void ab-initio and, therefore, no interference is called for in the said order under the supervisory powers of this court under Article 227 of the Constitution.

4. As directed by the interlocutory order of this court, the petitioners-Management has deposited an amount of Rs.1,86,000/-. Admittedly, respondent-Headmistress has attained the age of superannuation in September, 2004 and, therefore, she would be entitled for the benefit of backwages till the age of superannuation, as if continued in service.

5. On the question of calculation of monthly salary Ms. Shridharan the learned counsel for the petitioners pointed out that initially the respondent-employee was paid her salary at the rate of Rs.6000/- per month and when she was issued with the order of termination she was drawing the salary of Rs.9000/- per month and it was, therefore, contended

that the amount of backwages as directed by the School Tribunal till the date of superannuation would be calculated on the basis of the salary that was paid to the respondent no.1. The learned counsel for the respondent has relied upon a Division Bench decision of this court in the case of Raskar Vidya Damodar @ Mrs. Bhujbal Vidya vs. Maharashtra Arogyamandal and ors. **[2000 (4) Mh.L.J. 129]**. It has been held in the said case that so long as the teacher holds the prescribed qualifications and eligibility for appointment as a teacher in a private school, he/she will be entitled to the payment of salary as fixed by the State Government irrespective of whether the private school is aided or unaided, by following the law laid down in the case of K. Krishnamacharyulu and ors. vs. Sri Venkateswara Hindu College of Engineering and anr. **[AIR 1998 SC 295]** and Chandigarh Administration and ors. vs. Rajani Vali and ors. **[JT 2000(1) SC 159]**. As noted earlier, Section 3(1) of the MEPS Act, 1977 clearly states that the provisions of the Act will be applicable to all the private schools whether aided or unaided and, therefore, the salary scale prescribed by the State

Government for the aided school would be applicable to the teachers in the unaided private schools. It was then contended by Ms.Shridharan that the issue of salary in any case was not raised by the respondent no.1 before the School Tribunal and she had accepted the payment of salary at the rates paid to her. Notwithstanding the fact that the respondent no.1 did not agitate the issue regarding the salary payment, the legal position is well settled. Ms. Shridharan then prayed for some time to settle the legal dues and this is a fair request.

6. In the premises, the petition is rejected summarily and the petitioners are directed to settle the legal dues of the respondent no.1 as expeditiously as possible and preferably by 31st December, 2006. The amount already deposited in this court be refunded to the respondent no.1 and this will be adjusted against the final dues.

(B.H. Marlapalle,J.)